

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 863

Introduced by Senator Lieu

(Principal coauthor: Assembly Member Hagman)

February 18, 2011

An act to amend Sections 4903.1, 4903.5, 4904, and 4905 of, and to add Section 4903.05 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 863, as amended, Lieu. Workers' compensation: liens.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

(1) Existing law prescribes certain requirements upon the filing of a lien by a lien claimant and requires the Workers' Compensation Appeals Board to file liens immediately upon receipt.

This bill would recast these provisions.

(2) Existing workers' compensation law authorizes the appeals board to determine and allow specified expenses, including, but not limited to, certain expenses incurred by a medical provider as liens against any sum to be paid as compensation. Existing law requires, before issuing an award or approval of any compromise of claim, the determination of whether any benefits have been paid or services provided by specified entities.

This bill would ~~remove a health care provider from among these entities. This bill would also~~ remove the appeals board's authority to

order specified medical liens in a proceeding before the board without a request for the lien having been made.

(3) Existing law prohibits a lien claim for reasonable expenses incurred by or on behalf of the injured employee and medical-legal expenses from being filed after 6 months from the date on which the appeals board or a workers' compensation administrative law judge issues a final decision, findings, order, including an order approving compromise and release, or award, on the merits of the claim, after 5 years from the date of the injury for which the services were provided, or after one year from the date the services were provided, whichever is later.

This bill would instead prohibit a lien claim from being filed after 3 years from the date the services were provided, or more than 18 months after the date the services were provided if the services were provided on or after July 1, 2012. This bill would also authorize a health care service plan, group disability insurer, self-insured employee welfare benefit plan, or publicly funded program providing medical benefits on a nonindustrial basis to file a lien claim for medical expenses within 6 months after the entity has notice that an industrial injury is being claimed but in no event later than 3 years from the date the services were provided to the employee. This bill would require the appeals board to adopt prescribed rules of practice and procedure. This bill would state that these provisions apply to any liens that are filed with the appeals board on or after the operative date of this act regardless of the date services were provided, except as expressly provided.

(4) Existing law allows the Employment Development Department (EDD) to file a lien for unemployment compensation benefits and unemployment disability benefits.

This bill would provide that for a claim allowable as a lien in favor of EDD, the claim is a lien against any amount thereafter payable as temporary or permanent disability compensation. This bill would state that this provision is declarative of existing law and shall not constitute good cause to reopen, rescind, or amend any final order, decision, or award of the appeals board.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4903.05 is added to the Labor Code, to
2 read:

3 4903.05. (a) Any lien claimant under Section 4903 shall file
4 its lien with the appeals board in writing upon a form approved by
5 the appeals board. The lien shall be accompanied by a full
6 statement or itemized voucher supporting the lien and justifying
7 the right to reimbursement and proof of service upon the injured
8 worker, or if deceased, upon the worker's dependents, the
9 employer, the insurer, and the respective attorneys or other agents
10 of record.

11 (b) The appeals board shall file liens pursuant to Section 4903
12 immediately upon receipt. Numbers shall be assigned pursuant to
13 subdivision (c) of Section 5500.

14 SEC. 2. Section 4903.1 of the Labor Code is amended to read:

15 4903.1. The appeals board, arbitrator, or settlement conference
16 referee, before issuing an award or approval of any compromise
17 of claim, shall determine, on the basis of liens filed with it pursuant
18 to Section 4903.05, whether any benefits have been paid or services
19 provided by *a health care provider*, a health care service plan, a
20 group disability policy, including a loss of income policy, a
21 self-insured employee welfare benefit plan, or a hospital service
22 contract, and its award or approval shall provide for reimbursement
23 for benefits paid or services provided under these plans as follows:

24 (a) When the referee issues an award finding that an injury or
25 illness arises out of and in the course of employment, but denies
26 the applicant reimbursement for self-procured medical costs solely
27 because of lack of notice to the applicant's employer of his need
28 for hospital, surgical, or medical care, the appeals board shall
29 nevertheless award a lien against the employee's recovery, to the
30 extent of benefits paid or services provided, for the effects of the
31 industrial injury or illness, by *a health care provider*, a health care
32 service plan, a group disability policy, a self-insured employee
33 welfare benefit plan, or a hospital service contract.

34 (b) When the referee issues an award finding that an injury or
35 illness arises out of and in the course of employment, and makes
36 an award for reimbursement for self-procured medical costs, the
37 appeals board shall allow a lien, to the extent of benefits paid or
38 services provided, for the effects of the industrial injury or illness,

1 by *a health care provider*; a health care service plan, a group
2 disability policy, a self-insured employee welfare benefit plan, or
3 a hospital service contract.

4 (c) When the referee issues an award finding that an injury or
5 illness arises out of and in the course of employment and makes
6 an award for temporary disability indemnity, the appeals board
7 shall allow a lien as living expense under Section 4903, for benefits
8 paid by a group disability policy providing loss of time benefits.
9 The lien shall be allowed to the extent that benefits have been paid
10 for the same day or days for which temporary disability indemnity
11 is awarded and shall not exceed the award for temporary disability
12 indemnity. A lien shall not be allowed hereunder unless the group
13 disability policy provides for reduction, exclusion, or coordination
14 of loss of time benefits on account of workers' compensation
15 benefits.

16 (d) When the parties propose that the case be disposed of by
17 way of a compromise and release agreement, in the event the lien
18 claimant, *other than a health care provider*, does not agree to the
19 amount allocated to it, then the referee shall determine the potential
20 recovery and reduce the amount of the lien in the ratio of the
21 applicant's recovery to the potential recovery in full satisfaction
22 of its lien claim.

23 SEC. 3. Section 4903.5 of the Labor Code is amended to read:

24 4903.5. (a) A lien claim for expenses as provided in
25 subdivision (b) of Section 4903 shall not be filed after three years
26 from the date the services were provided, nor more than 18 months
27 after the date the services were provided if the services were
28 provided on or after July 1, 2012.

29 (b) Notwithstanding subdivision (a), any health care service
30 plan licensed pursuant to Section 1349 of the Health and Safety
31 Code, group disability insurer under a policy issued in this state
32 pursuant to the provisions of Section 10270.5 of the Insurance
33 Code, self-insured employee welfare benefit plan issued in this
34 state as defined in Section 10121 of the Insurance Code, or publicly
35 funded program providing medical benefits on a nonindustrial
36 basis, may file a lien claim for expenses as provided in subdivision
37 (b) of Section 4903 within six months after the entity first has
38 notice that an industrial injury is being claimed, but in no event
39 later than three years from the date the services were provided to
40 the employee.

(c) The injured worker shall not be liable for any underlying obligation if a lien claim has not been filed and served within the allowable period. Except when the lien claimant is the applicant as provided in Section 5501 or as otherwise permitted by rules of practice and procedure adopted by the appeals board, a lien claimant shall not file a declaration of readiness to proceed in any case until the case-in-chief has been resolved.

(d) This section shall not apply to civil actions brought under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or the federal Racketeer Influenced and Corrupt Organization Act (Chapter 96 (commencing with Section 1961) of Title 18 of the United States Code) based on concerted action with other insurers that are not parties to the case in which the lien or claim is filed.

SEC. 4. Section 4904 of the Labor Code is amended to read:

4904. (a) If notice is given in writing to the insurer, or to the employer if uninsured, setting forth the nature and extent of any claim that is allowable as a lien in favor of the Employment Development Department, the claim is a lien against any amount thereafter payable as temporary or permanent disability compensation, subject to the determination of the amount and approval of the lien by the appeals board. When the Employment Development Department has served an insurer or employer with a lien claim, the insurer or employer shall notify the Employment Development Department, in writing, as soon as possible, but in no event later than 15 working days after commencing disability indemnity payments. When a lien has been served on an insurer or an employer by the Employment Development Department, the insurer or employer shall notify the Employment Development Department, in writing, within 10 working days of filing an application for adjudication, a stipulated award, or a compromise and release with the appeals board.

(b) (1) In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for any permanent disability indemnity resulting solely from the same

1 injury or illness or temporary disability indemnity, or both, is made
2 and for which the employer has not reimbursed the Employment
3 Development Department pursuant to Section 2629.1 of the
4 Unemployment Insurance Code.

5 (2) In determining the amount of lien to be allowed for
6 unemployment compensation benefits and extended duration
7 benefits under subdivision (g) of Section 4903, the appeals board
8 shall allow the lien in the amount of benefits which it finds were
9 paid for the same day or days for which an award of compensation
10 for temporary total disability is made.

11 (3) In determining the amount of lien to be allowed for family
12 temporary disability insurance benefits under subdivision (h) of
13 Section 4903, the appeals board shall allow the lien in the amount
14 of benefits that it finds were paid for the same day or days for
15 which an award of compensation for temporary total disability is
16 made and for which the employer has not reimbursed the
17 Employment Development Department pursuant to Section 2629.1
18 of the Unemployment Insurance Code.

19 (c) In the case of agreements for the compromise and release
20 of a disputed claim for compensation, the applicant and defendant
21 may propose to the appeals board, as part of the compromise and
22 release agreement, an amount out of the settlement to be paid to
23 any lien claimant claiming under subdivision (f), (g), or (h) of
24 Section 4903. If the lien claimant objects to the amount proposed
25 for payment of its lien under a compromise and release settlement
26 or stipulation, the appeals board shall determine the extent of the
27 lien claimant's entitlement to reimbursement on its lien and make
28 and file findings on all facts involved in the controversy over this
29 issue in accordance with Section 5313. The appeals board may
30 approve a compromise and release agreement or stipulation which
31 proposes the disallowance of a lien, in whole or in part, only where
32 there is proof of service upon the lien claimant by the defendant,
33 not less than 15 days prior to the appeals board action, of all
34 medical and rehabilitation documents and a copy of the proposed
35 compromise and release agreement or stipulation. The
36 determination of the appeals board, subject to petition for
37 reconsideration and to the right of judicial review, as to the amount
38 of lien allowed under subdivision (f), (g), or (h) of Section 4903,
39 whether in connection with an award of compensation or the
40 approval of a compromise and release agreement, shall be binding

1 on the lien claimant, the applicant, and the defendant, insofar as
2 the right to benefits paid under the Unemployment Insurance Code
3 for which the lien was claimed. The appeals board may order the
4 amount of any lien claim, as determined and allowed by it, to be
5 paid directly to the person entitled, either in a lump sum or in
6 installments.

7 (d) Where unemployment compensation disability benefits,
8 including family temporary disability insurance benefits, have
9 been paid pursuant to the Unemployment Insurance Code while
10 reconsideration of an order, decision, or award is pending, or has
11 been granted, the appeals board shall determine and allow a final
12 amount on the lien as of the date the board is ready to issue its
13 decision denying a petition for reconsideration or affirming,
14 rescinding, altering or amending the original findings, order,
15 decision, or award.

16 (e) The appeals board may not be prohibited from approving a
17 compromise and release agreement on all other issues and deferring
18 to subsequent proceedings the determination of a lien claimant's
19 entitlement to reimbursement if the defendant in any of these
20 proceedings agrees to pay the amount subsequently determined to
21 be due under the lien claim.

22 SEC. 5. Section 4905 of the Labor Code is amended to read:

23 4905. Except with regard to liens as permitted in subdivision
24 (b) of Section 4903, where it appears in any proceeding pending
25 before the appeals board that a lien should be allowed if it had
26 been duly requested by the party entitled thereto, the appeals board
27 may, without any request for such lien having been made, order
28 the payment of the claim to be made directly to the person entitled,
29 in the same manner and with the same effect as though the lien
30 had been regularly requested, and the award to such person shall
31 constitute a lien against unpaid compensation due at the time of
32 service of the award.

33 SEC. 6. The amendments to Section 4903.5 made by this act
34 apply to any liens that are filed with the appeals board on or after
35 the operative date of this act regardless of the date services were
36 provided except as otherwise expressly provided by that section.

37 SEC. 7. The amendments to Section 4904 made by this act are
38 declarative of existing law and shall not constitute good cause to

- 1 reopen, rescind, or amend any final order, decision, or award of
- 2 the appeals board.

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